

Revenue Requirement and Just and Reasonable Determination

Deemed Emergency Pursuant to Statute

Water Code section 80014(a) provides that the Office of Administrative Law shall consider any regulations adopted by the Department of Water Resources (Department) for the purposes of the purchase and sale of electrical power pursuant to Division 27 (commencing with section 80000) of the Water Code to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Authority and Reference Citations

The authority under which these regulations are adopted is Water Code section 80014. The particular code sections implemented, interpreted, or made specific by these regulations are Water Code sections 80000, 80003, 80100, 80102(b), 80110, 80134, and 80200.

Informative Digest-Policy Statement Overview

To ensure that reliable reasonably priced electric service is available statewide, Division 27 (commencing at Water Code section 80000) authorizes the Department to participate in electrical power markets by contracting for the purchase of electrical power and by selling the power to retail end use customers, and with specified exceptions, to local publicly owned electrical utilities at not more than the Department's acquisition costs plus other specified costs. Division 27 also authorizes the Department to contract with electrical corporations to transmit and distribute power and provide billing, collection, and other related services as agents of the Department. Water Code section 80012 requires the Department to "do those things necessary and authorized under [Water Code sections 80100-80134] to make power available directly or indirectly to electric consumers in California." Water Code section 80110 specifically authorizes the Department to contract for the purchase of power "on such terms and for such periods as the department determines and at such prices the Department deems appropriate" taking into account specified considerations.

The electric power purchase program established by Division 27 is funded entirely through the Department's Electric Power Fund revenue requirement.

Obligations authorized by this division shall be payable solely from the [Department of Water Resources Electric Power Fund]. Neither the full faith and credit nor the taxing power of the state are or may be pledged for any payment under any obligation authorized by this division. [Water Code section 80200, subdivision (d).]

Revenue Requirement and Just and Reasonable Determination

The Department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with [Water Code] Section 80134, . . . Such revenue requirements may also include any advances made to the department hereunder or hereafter for the purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001. [Water Code section 80110.]

Division 27 also establishes the mechanism for funding the Department's Electric Power Fund revenue requirement. Water Code section 80134 requires the Department to periodically establish and revise revenue requirements sufficient to provide the following:

- (1) The amounts necessary to pay the principal of and premium, if any, and interest on all bonds as and when the same shall become due.
- (2) The amounts necessary to pay for power purchased by it and to deliver it to purchasers, including the cost of electric power and transmission, scheduling, and other related expenses incurred by the department, or to make payments under any other contracts, agreements, or obligations entered into by it pursuant hereto, in the amounts and at the times the same shall become due.
- (3) Reserves in such amount as may be determined by the department from time to time to be necessary or desirable.
- (4) The pooled money investment rate on funds advanced for electric power purchases prior to the receipt of payment for those purchases by the purchasing entity.
- (5) Repayment to the General Fund of appropriations made to the fund pursuant hereto or hereafter for purposes of this division, appropriations made to the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001.
- (6) The administrative costs of the department incurred in administering this division.

The Department must notify the California Public Utilities Commission (CPUC) following any determination or revision of a revenue requirement.

Pursuant to the Rate Agreement approved pursuant to Commission Decision 02-02-051, the CPUC is required to impose charges upon retail end use customers for electric power deemed sold to them by the Department. The Rate Agreement also requires the CPUC to impose bond charges on customers within each of the service areas of Pacific

Revenue Requirement and Just and Reasonable Determination

Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company until the Department has recovered the portion of the Department's revenue requirements under Water Code section 80134 for bond related costs. The bond charges are to be based upon the amount of electric power sold to customers within each of the service areas.

The Division 27 funding mechanism authorizes a "just and reasonable review" by the Department. In this regard, Water Code section 80110 provides:

For purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department.

Water Code section 80014 authorizes the Department to adopt regulations for the purposes of Division 27. Such regulations must construe Division 27 in a manner so as to effectuate its purposes and objectives. (Water Code section 80003(b).)

The regulations in this rulemaking action specify the procedures and standards the Department shall use in conducting any "just and reasonable review" of revenue requirements established and revised by the Department pursuant to Division 27. The Department believes that these regulations, as an essential part of a ratesetting process, are expressly exempt from the Administrative Procedure Act pursuant to the "rates, prices, or tariffs" exemption set forth in Government Code section 11340.9(g). However, the Department is adopting them as regulations to provide the public with a meaningful opportunity for public participation through the use of familiar Administrative Procedure Act procedures.

Comparable Federal Regulation Or Statute

There are no comparable federal regulations or statutes under which a federal electric power agency or enterprise delivers its revenue requirement to a regulatory body for implementation in retail customer rates.

Satisfaction of Other Statutory Requirements

Water Code section 161 provides that department regulations must be approved by the California Water Commission before they become effective.

Local Mandate Determination

These regulations do not create a local mandate.

Revenue Requirement and Just and Reasonable Determination

Estimate of Fiscal Impact

These regulations do not impose any cost on a local agency or school district which is required to be reimbursed pursuant to Government Code sections 17500-17630, nor do they impose any other non-discretionary cost or saving on a local agency. These regulations will not result in any cost or savings to any state agency. Any Department of Water Resources costs from determining its revenue requirements and conducting any just and reasonable review thereof pursuant to Water Code Section 80110 are attributed directly to the statute. All of these costs are a part of the revenue requirement the department must recover pursuant to Water Code Section 80134. These regulations will not result in any cost or savings in federal funding to the state.